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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,459

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Mark J. Levine

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20999 7590 10/15/2007  
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EXAMINER

PIZIALI, ANDREW T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/730,459	<b>Applicant(s)</b> LEVINE ET AL.	
	<b>Examiner</b> Andrew T. Piziali	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 23-30 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,9-12,24,28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-8,13,14,23,25-27 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/14/04 & 3/23/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/5/2007 has been entered.

### ***Claim Rejections - 35 USC § 102/103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4, 6, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 3,110,905 to Rhodes.

Rhodes discloses a tufted fabric comprising flat filaments (see entire document including column 1, line 71 through column 2, line 50). Rhodes does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 2 and 4, Rhodes discloses that at least one direction (CD or MD) of filaments may include non-flat filaments (51) (see Figure 1).

Regarding claim 6, Rhodes discloses that the flat filaments may include a combination of the MD and CD filaments (column 1, line 71 through column 2, line 50).

Regarding claims 23 and 25-27, Rhodes discloses that the filaments may be spun, extruded, or shaped into a flat or rectangular shape (column 2, lines 33-50) and then woven (column 2, lines 14-16). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show obvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art

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either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

5. Claims 1, 2, 4, 6, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 4,595,627 to Steinman.

Steinman discloses a fabric comprising flat filaments (see entire document including column 1, lines 52-66). Steinman does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 2 and 4, Steinman discloses that at least one direction (CD or MD) of filaments may include non-flat filaments (column 1, lines 52-66, claim 1, and Figure 1).

Regarding claim 6, Steinman discloses that the flat filaments may include a combination of the MD and CD filaments (see claim 1).

Regarding claims 23 and 25-27, Steinman discloses that the filaments may be slitted into a flattened or rectangular shape and then woven (column 1, lines 52-66). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

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6. Claims 1, 2, 4, 6, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,883,022 to Elsener.

Elsener discloses a fabric comprising flat filaments (see entire document including column 3, lines 40-47). Elsener does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 2 and 4, Elsener discloses that at least one direction (CD or MD) of filaments may include non-flat filaments (column 3, lines 40-47).

Regarding claim 6, Elsener discloses that the flat filaments may include a combination of the MD and CD filaments (column 3, lines 40-47).

Regarding claims 23 and 25-27, Elsener discloses that the filaments of the fibers may be rectangular (flat) prior to weaving the fabric (column 3, lines 40-47). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

7. Claims 1, 6, 13, 14, 23, 25-27 and 30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 4,345,730 to Leuvelink.

Leuvelink discloses a fabric comprising flat filaments (see entire document including column 5, lines 19-23). Leuvelink does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and

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the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 6, Leuvelink discloses that the flat filaments may include a combination of the MD and CD filaments (column 5, lines 19-23 and Figure 7).

Regarding claim 13, Leuvelink does not specifically mention the permeability of the fabric, but considering that the fabric disclosed by Leuvelink is substantially identical to the claimed fabric (spiral link fabric comprising flat filaments), and considering that the applicant discloses that such a fabric inherently possesses the claimed permeability (see page 11, lines 8 and 9 of the current specification), it appears that the fabric inherently possesses the claimed permeability.

Regarding claims 14 and 30, Leuvelink discloses that the fabric may be a spiral link type fabric (see Figure 7).

Regarding claims 23 and 25-27, Leuvelink does not specifically mention how or when in the process the filaments are made flat, but absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article because the end result is a fabric comprising flattened filaments.

### ***Claim Rejections - 35 USC § 103***

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,110,905 to Rhodes as applied to claims 1, 2, 4, 6, 23 and 25-27 above, and further in view of anyone of USPN 5,465,761 to Gheysen or USPN 6,457,489 to Smissaert.

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Rhodes does not appear to mention the use of a multilayer tufted fabric weave, but Gheysen and Smissaert each disclose that it is known in the tufted fabric art to use multilayer tufted fabric weaves (see entire document including column 1, lines 4-30 of Gheysen and column 1, lines 4-13 of Smissaert). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the weave in any suitable weave construction, such as a multilayer weave, because it is within the general skill of a worker in the art to select a known weave on the basis of its suitability and desired characteristics.

9. Claims 1, 6, 13, 14, 23, 25-27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of USPN 4,345,730 to Leuvelink.

Greenway discloses hydroentangling devices in combination with conveyor belts (see entire document including column 4, lines 33-46), but Greenway does not mention specific conveyor belt materials. Greenway is silent with regards to specific conveyor belt materials, therefore, it would have been necessary and thus obvious to look to the prior art for conventional conveyor belt materials. Leuvelink provides this conventional teaching showing that it is known in the conveyor belt art to use a fabric comprising flat filaments (see entire document including column 4, line 63 through column 5, line 23). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the conveyor belts from the flat filament fabric of Leuvelink, motivated by the expectation of successfully practicing the invention of Greenway. Although Leuvelink does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed



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invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 6, Leuvelink discloses that the flat filaments may include a combination of the MD and CD filaments (column 5, lines 19-23 and Figure 7).

Regarding claim 13, Leuvelink does not specifically mention the permeability of the fabric, but considering that the fabric disclosed by Leuvelink is substantially identical to the claimed fabric (spiral link fabric comprising flat filaments), and considering that the applicant discloses that such a fabric inherently possesses the claimed permeability (see page 11, lines 8 and 9 of the current specification), it appears that the fabric inherently possesses the claimed permeability.

Regarding claims 14 and 30, Leuvelink discloses that the fabric may be a spiral link type fabric (see Figure 7).

Regarding claims 23 and 25-27, Leuvelink does not specifically mention how or when in the process the filaments are made flat, but absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article because the end result is a fabric comprising flattened filaments.

***Response to Arguments***

10. Applicant's arguments filed 9/5/2007 have been considered but are mostly moot in view of the new grounds of rejection.

Regarding Greenway in view of Leuvelink, the applicant asserts that there is no motivation to combine the references. The examiner respectfully disagrees. Greenway is silent with regards to specific conveyor belt materials, therefore, it would have been necessary and thus obvious to look to the prior art for conventional conveyor belt materials. Leuvelink provides this conventional teaching showing that it is known in the conveyor belt art to use a fabric comprising flat filaments (see entire document including column 4, line 63 through column 5, line 23). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the conveyor belts from the flat filament fabric of Leuvelink, motivated by the expectation of successfully practicing the invention of Greenway.

A patent for a combination, which only unites old elements with no change in their respective functions, obviously withdraws what is already known into the field of its monopoly and diminishes the resources available to skillful men. Where the combination of old elements performed a useful function, but it added nothing to the nature and quality of the subject matter already patented, the patent failed under §103. When a patent simply arranges old elements with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious. **KSR v. Teleflex**

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/  
Primary Examiner, Art Unit 1794